

**CONTRACT #8**  
**RFS # 309.01-094**

**Treasury Department**

**VENDOR:**  
**Bryan, Pendleton, Swats,**  
**and McAllister, LLC**

## REQUEST: NON-COMPETITIVE CONTRACT

RECEIVED

MAR 13 2006

FISCAL REVIEW

APPROVED

Commissioner of Finance &amp; Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required.  
A request can not be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.

|  |   |  |
|--|---|--|
| 1) RFS #   | 309.01-094  |  |
| 2) State Agency Name :   | Tennessee Treasury Department   |  |
| 3) Service Caption :   | Provide actuarial services to the Treasury Department.  |  |
| 4) Proposed Contractor :   | Bryan, Pendleton, Swats, and McAllister, LLC  |  |
| 5) Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt)  | July 1, 2006  |  |
| 6) Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :  | June 30, 2010   |  |
| 7) Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :   | \$1,900,000   |  |
| 8) Approval Criteria :<br>(select one)   | <input checked="checked" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state<br><input type="checkbox"/> only one uniquely qualified service provider able to provide the service |  |
| 9) Description of Service to be Acquired :   | See Attached Memorandum Dated February 27, 2006   |  |
| 10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service :   |   |  |
| 11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used :                           |   |  |
| 12) Name & Address of the Proposed Contractor's Principal Owner(s)<br>(not required if proposed contractor is a state education institution)         |   |  |
| 13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service :  |   |  |
| 14) Documentation of Office for Information Resources Endorsement :<br>(required <u>only</u> if the subject service involves information technology) |   |  |

|   |   |   |
|---|---|---|
| <b>select one:</b>  | <input checked="checked" type="checkbox"/> Documentation Not Applicable to this Request | <input type="checkbox"/> Documentation Attached to this Request |
| <b>15) Documentation of Department of Personnel Endorsement :</b><br>(required <u>only</u> if the subject service involves training for state employees)  |   |   |
| <b>select one:</b>  | <input checked="checked" type="checkbox"/> Documentation Not Applicable to this Request | <input type="checkbox"/> Documentation Attached to this Request |
| <b>16) Documentation of State Architect Endorsement :</b><br>(required <u>only</u> if the subject service involves construction or real property related services)  |   |   |
| <b>select one:</b>  | <input checked="checked" type="checkbox"/> Documentation Not Applicable to this Request | <input type="checkbox"/> Documentation Attached to this Request |
| <b>17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :</b><br><br>  |   |   |
| <b>18) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process :</b><br>(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)<br><br>                                |   |   |
| <b>REQUESTING AGENCY HEAD SIGNATURE &amp; DATE :</b><br>( <u>must</u> be signed & dated by the <u>ACTUAL</u> procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances) |   |   |
| <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="font-family: cursive; font-size: 24px; width: 40%;">Dale Sims</div> <div style="font-size: 24px; width: 40%;">2/27/06</div> </div>  |   |   |
| <b>Agency Head Signature</b>  |   | <b>Date</b>   |

STATE OF TENNESSEE




DALE SIMS  
STATE TREASURER

TREASURY DEPARTMENT  
STATE CAPITOL  
NASHVILLE, TENNESSEE 37243-0225

MEMORANDUM

TO: The Honorable M. D. Goetz, Jr., Commissioner  
Department of Finance and Administration

FROM: Dale Sims, Treasurer   
Department of the Treasury

DATE: February 27, 2006

RE: *Noncompetitive Contract Request – Actuarial Services for the Tennessee Consolidated Retirement System and the Baccalaureate Education System Trust*

BACKGROUND

*Tennessee Code Annotated* Section 8-34-501 requires the use of an independent consulting actuary to provide actuarial support services for the purpose of assisting the Treasury Department in maintaining the actuarial soundness of the retirement program. Other smaller divisions require relatively minor actuarial services..

The Treasury Department has existing contracts with Bryan, Pendleton, Swats, and McAllister, LLC (BPS&M) that will expire on June 30, 2006. The contract was for a four-year term. Under the contract, BPS&M provides two actuarial valuations for the TCRS, an experience study, two valuations for over 400 political subdivisions, and actuarial support for all legislative pension proposals and staff studies. Other actuarial services are provided as needed.

The TCRS is an amalgamation of twelve state-authorized pension plans that were consolidated in 1972 to 1978. Within the superseded systems the state employee and teacher plans also contain several subordinate groups that have different benefit and member contribution rates than the main classes of employees. Rights for existing members to the benefits of the superseded plans were preserved. TCRS itself contains four groups with varying levels of contributions and benefits. Overall, TCRS provides retirement services to over 315,000 active, inactive, and retired members in 41 different retirement types.

TCRS is a comprehensive retirement system. The plan provides disability and death benefit protection and well as annuity benefits to retired employees. On an optional basis, retired employees may provide a contingent joint survivorship plan to a beneficiary.

TCRS offers the pension coverage to political subdivisions, (counties, cities, utility districts, etc) with over 400 reporting entities having sought pension coverage through TCRS. The uniform administration, portability between employers, modest administrative costs, and professional investment management of the system's assets are frequently cited as the motivation for seeking membership in the TCRS. Assets and liabilities are maintained for each entity since each political subdivision is responsible for funding the pension for its employees.

The department has successfully negotiated a fixed maximum cost for the biennial actuarial valuations and experience studies. Other services such as support for studies and analysis of legislative proposals will be provided at a service rate of \$207 per hour. In addition, year over year rate growth during the contract period will be the lesser of the calendar year increase in the Consumer Price Index or three percent. All annual valuations will be on a fixed rate basis with other work proposed to be at the same hourly rate.

## **I.**

### **DESCRIPTION OF SERVICE TO BE ACQUIRED**

BPS&M has agreed to enter into a new contract with the State whereby BPS&M would perform actuarial services for an additional four-year period. TCRS actuarial valuations will be performed in 2007 and 2009 with an experience study in 2008. The valuations will produce recommended employer contribution rates for all state systems and each individual political subdivision that participates in TCRS. Other services include calculation of liabilities associated with legislative proposals, participation in studies, and research.

## **II.**

### **EXPLANATION OF THE NEED FOR OR REQUIREMENT PLACED ON THE PROCURING AGENCY TO ACQUIRE THE SERVICE**

As previously stated under "Background", the Treasury Department is responsible for administering TCRS. Retirement law and prudent management dictate a retirement actuarial valuation every two years and an experience study at least every six years. The experience study is necessary for the TCRS Board of Trustees to establish the financial and demographic assumptions for use in the valuations. The actuary then evaluates the health of each plan as part of the valuation process and recommends employer contribution rates to maintain plan stability.

## **III.**

### **EXPLANATION OF WHETHER THE PROCURING AGENCY BOUGHT THE SERVICE IN THE PAST, AND IF SO, WHAT PROCURMENT METHOD IT USED**

The Treasury Department has existing contracts with BPS&M that were procured through non-competitive negotiation. The primary reason is, unlike other state plans, the over 400 participating political subdivisions must be valued separately from the state and

each other. The TCRS and the actuary must track assets and service credit by current and former employers to determine the appropriate liabilities to assign to each employer. Currently, BPS&M is the only known entity providing actuarial services to a large consolidated state pension plan that is required to offer 24 optional features to each political subdivision for inclusion in an individual valuation for each entity. When a substantive change is made to the TCRS service, contribution, or benefits a new optional provision is created for local governments. The actuary must take each into account when calculating pension liabilities. There are currently 24 different optional provisions, any combination of which could have been adopted by the chief governing body, which have an impact on the actuarial calculations. With the number of political subdivisions and options available this could, in theory, create over one million permutations of plan option combinations and when multiplied by the number of entities this creates a multitude of plan combinations.

#### IV.

#### NAME AND ADDRESS OF THE PROPOSED CONTRACTOR'S PRINCIPAL OWNER(S)

|   |   |
|---|---|
| <p><b><u>Tennessee</u></b><br/> <b>Shelia R. Cox, CEBS</b><br/> <b>Brad Fisher, F.S.A., E.A.</b><br/> <b>Elizabeth Hammond, F.S.A., E.A.</b><br/> <b>John Lucas, JD, C.P.A., C.P.C.</b><br/> <b>Joseph W. Johnson, F.S.A., E.A.</b><br/> <b>Alan C. Pennington, F.S.A., E.A.</b><br/> <b>Benjamin R. Sears, JD, L.L.M.</b><br/> <b>David L. Shaub, F.S.A.</b><br/> <b>S. Kevin Sullivan, F.S.A., E.A.</b><br/> <b>Thomas A. Swain, F.S.A., E.A.</b><br/> <b>Justin C. Thacker, F.S.A., E.A.</b><br/> <b>Phillip M. Trella</b><br/> <b>Thomas A. Vaught, F.S.A., E.A.</b><br/> <b>BPS&amp;M, LLC</b><br/> 5301 Virginia Way, Suite 400<br/> Brentwood, TN 37027<br/> Main Phone: (615) 665-1640<br/> Fax: (615) 665-1650</p> | <p><b><u>Kentucky</u></b><br/> <b>Kenneth F. Hohman, F.S.A., E.A.</b><br/> <b>BPS&amp;M, LLC</b><br/> 11807 Brinley Ave, Suite 101<br/> Louisville, KY 40243-1090<br/> Main Phone: (502) 244-7828<br/> Fax: (502) 244-7838</p> <p><b><u>Mississippi</u></b><br/> <b>Michael E. Brister, F.S.A., E.A.</b><br/> <b>David Donald, F.S.A., E.A.</b><br/> <b>Hunter Pratt, F.S.A., E.A.</b><br/> <b>BPS&amp;M, LLC</b><br/> 4500 I-55 North, Highland Village, Suite 266<br/> Jackson, MS 39211<br/> Main Phone: (601) 981-2155<br/> Fax: (601) 366-7341</p> |
|---|---|

#### V.

#### EVIDENCE OF THE PROPOSED CONTRACTOR'S EXPERIENCE AND LENGTH OF EXPERIENCE IN PROVIDING THE SERVICE

Founded as a partnership in 1971, BPS&M has over 30 years of benefits consulting experience. BPS&M is an employee benefits consulting firm that provides a full range of services focusing on the design, implementation, and administration of retirement plans, health and welfare programs, nonqualified deferred compensation plans and benefits communications. BPS&M offices located in Nashville, Tennessee; Louisville, Kentucky; and Jackson, Mississippi, serve more than 700 clients, throughout the 50 states, with interests in local, national, and international markets. Clients' industries include insurance and financial services, health care, manufacturing, governments, tax-exempt organizations and retail businesses.

BPS&M has over 100 employees. The Nashville office alone contains an actuarial staff of twenty-six, with ten Fellows of the Society of Actuaries (the highest designation in the actuarial field). Staff includes other benefits consulting professionals including MBAs, CPAs and various credentials from the American Society of Pension Actuaries (ASPA). Legal staff is composed of four JDs who provide technical support to both clients and internally to consultants.

**VI.**

**DOCUMENTATION OF OFFICE FOR INFORMATION RESOURCES  
ENDORSEMENT (REQUIRED ONLY IF THE SERVICE INVOLVES  
INFORMATION TECHNOLOGY)**

N/A

**VII.**

**DOCUMENTATION OF DEPARTMENT OF PERSONNEL ENDORSEMENT  
(REQUIRED ONLY IF THE SERVICE INVOLVES TRAINING FOR STATE  
EMPLOYEES)**

N/A

**VIII.**

**DOCUMENTATION OF STATE ARCHITECT ENDORSEMENT  
(REQUIRED ONLY IF THE SUBJECT SERVICE INVOLVES CONSTRUCTION  
OR REAL PROPERTY RELATED SERVICES)**

N/A

**IX.**

**DESCRIPTION OF PROCURING AGENCY EFFORTS TO IDENTIFY  
REASONABLE, COMPETITIVE, PROCUREMENT ALTERNATIVES  
(RATHER THAN TO USE NON-COMPETITIVE NEGOTIATION)**

TCRS has compared the actuarial services provided to a sample of other states with a similar size and consolidated structure. Most obtain a fixed cost for major projects and hourly rates for minor or non-routine projects. No other similar state contains the complexity of the TCRS with individual political subdivision valuations and a host of

optional features at the employer level. While difficult to compare, TCRS was the second lowest of the cost per member comparison (Table 3) once the political subdivision options were extracted for an even comparison. The highest cost per member of the seven systems surveyed was \$ 1.01 while the least was \$.64. The TCRS cost per member is \$.65. Evidence indicated that significant transition costs exceeding \$100,000 would likely be incurred with a change as well.

## **X.**

### **JUSTIFICATION OF WHY THE STATE SHOULD USE NON-COMPETITIVE NEGOTIATION RATHER THAN A COMPETITIVE PROCESS**

BPS&M has been a key player in helping TCRS attain and maintain a pension system that is widely recognized as a model for other states. BPS&M has banked an enormous base of institutional knowledge relative to TCRS and has a proven track record of quality and methodology that has been validated in an independent actuarial audit completed in January 2000. BPS&M has traditionally been a conservative firm that has helped TCRS avoid the pitfalls encountered in several other plans that have caused funding challenges much greater than those faced by Tennessee. The proposed fees are reasonable and the non-competitive process will help the system avoid transition expenses, training costs, and the risk of error incumbent with change to a new provider.

The TCRS includes twelve pension plans with subsets within those systems. (See attached Table I) Each subset must be valued and many include complex calculations that incorporate both defined benefit and defined contribution components such as the closed local teacher plans with the "hypothetical teacher annuity" offset and the TIAA annuity offset calculation contained in the superseded University of Tennessee system. These type plans are sometimes called "hybrid pension plans" or "floor offset plans". Further complicating the system are the non-contributory option, non-contributory 3.6% indexing of salaries, and the age 65 actuarial-equivalent guarantee.

No other system has the same relationship with its political subdivisions and the array of benefit options available for adoption. (See attached Table 2) Over time, TCRS has paid for the programming necessary to manage this process with the valuation of these options and the allocation of assets and liabilities when a member has service with more than one employer. TCRS would like to avoid paying for this again and take advantage of the efficiencies found with the proven incumbent contractor. Smaller programs will benefit from the purchasing power of the TCRS by having a similar arrangement.



**Table 1**

**Superseded Systems**

- Former Governors & Spouses Retirement System
- Aged State Employees (pre-1945 service)
- Aged Teachers (pre-1945 service)
- Attorneys General Retirement System
- County Officials Retirement System
- TN State Retirement System
  - Class A: covered by social security
  - Class B: opted out of social security
- Judges Retirement System
- County Paid Judges Retirement System
- State Teachers Retirement System
  - Class A: covered by social security
  - Class B: opted out of social security
- Public Service Commissioners Retirement System
- University of Tennessee Joint Contributory Retirement System

**Tennessee Consolidated Retirement System**

- Group 1: General State Employees & Teachers
- Group 2: Public Safety Officers (closed)
- Group 3: Judicial Retirement System (closed)
- Group 4: Judicial Retirement System (open)

**TABLE 2**

**Political Subdivisions - Participation Options (24)**

Membership Options - 3 options

- Cover part-time employees
- Establish waiting period
- Reduce Vesting from 10 years to 5 years

Contribution Options - 4 options

- Level contributions at 5% of salary above and below the SSWB
- Adopt tax-sheltered employee contributions under IRC 414(h)
- Non-contributory retirement
- 3.6% indexing for non-contributory members at point of adoption

Creditable Service Options - 6 options

- Credit for lost service due to advance age
- Unused sick leave
- Armed conflict military
- Credit for periods of temporary disability under worker's compensation
- Peacetime military prior to May, 1975
- Establish probationary period

Survivor Options - 3 options

- Spousal survivors benefit with 10 years of service
- Inactive death and disability benefits
- Line of duty death benefit

Retirement Benefit Options - 5 options

- 5% benefit improvement
- Actuarial equivalent for delayed retirement past age 65
- 25 year early retirement
- Minimum benefit of \$8 per month per year of service
- Mandatory retirement with bridge for public safety

Retired Member Options - 2 options

- Exclude COLA
- Include COLA (Simple or Compound)

Miscellaneous Option - 1 option

- Voluntary withdrawal

Table 3

## Actuarial Cost Comparison

| System         | Assets (b) | Actives   | Retirees | Cost of Actuarial Services |             | Average     | Total Members | Cost per member | Less TN 25% PS |
|----------------|------------|-----------|----------|----------------------------|-------------|-------------|---------------|-----------------|----------------|
|                |            |           |          | 2003                       | 2004        |             |               |                 |                |
| Colorado       | \$ 33.0    | 188,666   | 71,010   | \$326,000                  | \$281,000   | \$327,000   | 259,676       | \$1.26          | \$1.26         |
| Alabama        | \$ 28.0    | 219,303   | 86,736   | \$312,807                  | \$412,890   | \$310,476   | 306,039       | \$1.01          | \$1.01         |
| South Carolina | \$ 24.8    | 215,600   | 104,100  | \$281,872                  | \$241,434   | \$293,331   | 319,700       | \$0.92          | \$0.92         |
| Mississippi    | \$ 20.5    | 158,000   | 67,000   | \$188,511                  | \$187,297   | \$187,658   | 225,000       | \$0.83          | \$0.83         |
| Tennessee      | \$ 27.0    | 225,000   | 90,000   | \$144,978                  | \$393,761   | \$272,844   | 315,000       | \$0.87          | \$0.65         |
| Maryland       | \$ 32.0    | 211,000   | 100,000  | \$184,318                  | \$173,796   | \$197,497   | 311,000       | \$0.64          | \$0.64         |
| Totals         |            | 1,217,569 | 518,846  | \$1,438,486                | \$1,690,178 | \$1,588,806 | 1,736,415     | \$0.91          | \$0.91         |

TCRS as % of Average Cost Per Member      95%      71%

# C O N T R A C T   S U M M A R Y   S H E E T

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|  |              |                              |                          |  |                              |               |  |
|--|--------------|------------------------------|--------------------------|--|------------------------------|---------------|--|
| <b>RFS #</b>   |              |                              |                          | <b>Contract #</b>  |                              |               |  |
| 309.01-094   |              |                              |                          | FA-  |                              |               |  |
| <b>State Agency</b>  |              |                              |                          | <b>State Agency Division</b>   |                              |               |  |
| Tennessee Treasury Department  |              |                              |                          | Tennessee Consolidated Retirement System   |                              |               |  |
| <b>Contractor Name</b>   |              |                              |                          | <b>Contractor ID # (FEIN or SSN)</b>   |                              |               |  |
| Bryan, Pendleton, Swats and McAllister, LLC  |              |                              |                          | <input type="checkbox"/> C- or <input checked="" type="checkbox"/> V-            |                              | 62-0853448    |  |
| <b>Service Description</b>   |              |                              |                          |  |                              |               |  |
| The Contractor will provide the requisite actuarial services for the State in connection with the programs over which the State is responsible for managing. |              |                              |                          |  |                              |               |  |
| <b>Contract Begin Date</b>   |              | <b>Contract End Date</b>     |                          | <b>SUBRECIPIENT or VENDOR?</b>   |                              | <b>CFDA #</b> |  |
| July 1, 2006   |              | June 30, 2010                |                          |  |                              |               |  |
| <b>Mark Each TRUE Statement</b>  |              |                              |                          |  |                              |               |  |
| <input checked="" type="checkbox"/> Contractor is on STARS   |              |                              |                          | <input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts |                              |               |  |
| <b>Allotment Code</b>  |              | <b>Cost Center</b>           |                          | <b>Object Code</b>   |                              | <b>Fund</b>   |  |
| 309.01   |              | 032                          |                          | 083  |                              | 11            |  |
| <b>Funding Grant Code</b>  |              | <b>Funding Subgrant Code</b> |                          |  |                              |               |  |
|  |              |                              |                          |  |                              |               |  |
| <b>FY</b>  | <b>State</b> | <b>Federal</b>               | <b>Interdepartmental</b> | <b>Other</b>   | <b>TOTAL Contract Amount</b> |               |  |
| 2007   | \$375,000    |                              |                          |  | \$375,000                    |               |  |
| 2008   | \$535,000    |                              |                          |  | \$535,000                    |               |  |
| 2009   | \$440,000    |                              |                          |  | \$440,000                    |               |  |
| 2010   | \$550,000    |                              |                          |  | \$550,000                    |               |  |
| <b>TOTAL:</b>  | \$1,900,000  |                              |                          |  | \$1,900,000                  |               |  |

|   |   |                            |  |  |
|---|---|----------------------------|--|--|
| <b>— COMPLETE FOR AMENDMENTS ONLY —</b> |   |                            | <b>State Agency Fiscal Contact &amp; Telephone #</b>   |  |
| <b>FY</b>                               | <b>Base Contract &amp; Prior Amendments</b> | <b>THIS Amendment ONLY</b> | Mary Roberts-Krause, General Counsel<br>10 <sup>th</sup> Floor, Andrew Jackson Building<br>(615) 741-8202, extension 104 |  |
|   |   |                            | <b>State Agency Budget Officer Approval</b>  |  |
|   |   |                            |  |  |
|   |   |                            |  |  |
|   |   |                            |  |  |
|   |   |                            |  |  |
|   |   |                            |  |  |
| <b>TOTAL:</b>                           |   |                            |  |  |
| <b>End Date:</b>                        |   |                            |  |  |

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|---|---|---|--|--|
| <b>Contractor Ownership</b> (complete only for base contracts with contract # prefix: FA or GR)   |   |   |  |  |
| <input type="checkbox"/> African American   | <input type="checkbox"/> Person w/ Disability                 | <input type="checkbox"/> Hispanic                       | <input type="checkbox"/> Small Business                | <input checked="" type="checkbox"/> NOT minority/disadvantaged |
| <input type="checkbox"/> Asian  | <input type="checkbox"/> Female                               | <input type="checkbox"/> Native American                | <input type="checkbox"/> OTHER minority/disadvantaged— |  |
| <b>Contractor Selection Method</b> (complete for ALL: base contracts— N/A to amendments or delegated authorities)                                 |   |   |  |  |
| <input type="checkbox"/> RFP  | <input type="checkbox"/> Competitive Negotiation              | <input type="checkbox"/> Alternative Competitive Method |  |  |
| <input checked="" type="checkbox"/> Non-Competitive Negotiation   | <input type="checkbox"/> Negotiation w/ Government (GG or GU) | <input type="checkbox"/> Other                          |  |  |
| <b>Procurement Process Summary</b> (complete for selection by Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other) |   |   |  |  |

# C O N T R A C T   S U M M A R Y   S H E E T   S U P P L E M E N T

| <b>Contract Number</b> |             | FA-         |      |            |               |        |                  |
|------------------------|-------------|-------------|------|------------|---------------|--------|------------------|
| <b>Fiscal Year</b>     |             | 2007        |      |            |               |        |                  |
| Allotment Code         | Cost Center | Object Code | Fund | Grant Code | Subgrant Code | CFDA # | Amount           |
| 309.01                 | 032         | 083         | 11   |            |               |        | \$325,000        |
| 309.01                 | 081         | 083         | 11   |            |               |        | \$50,000         |
|                        |             |             |      |            |               |        |                  |
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|                        |             |             |      |            |               |        |                  |
| <b>TOTAL</b>           |             |             |      |            |               |        | <b>\$375,000</b> |

# C O N T R A C T   S U M M A R Y   S H E E T   S U P P L E M E N T

| <b>Contract Number</b> | FA-         |             |      |            |                  |        |                  |
|------------------------|-------------|-------------|------|------------|------------------|--------|------------------|
| <b>Fiscal Year</b>     | 2008        |             |      |            |                  |        |                  |
| Allotment<br>Code      | Cost Center | Object Code | Fund | Grant Code | Subgrant<br>Code | CFDA # | Amount           |
| 309.01                 | 032         | 083         | 11   |            |                  |        | \$480,000        |
| 309.01                 | 081         | 083         | 11   |            |                  |        | \$55,000         |
|                        |             |             |      |            |                  |        |                  |
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| <b>TOTAL</b>           |             |             |      |            |                  |        | <b>\$535,000</b> |

# CONTRACT SUMMARY SHEET SUPPLEMENT

| Contract Number |             | FA-         |      |            |               |        |           |
|-----------------|-------------|-------------|------|------------|---------------|--------|-----------|
| Fiscal Year     |             | 2009        |      |            |               |        |           |
| Allotment Code  | Cost Center | Object Code | Fund | Grant Code | Subgrant Code | CFDA # | Amount    |
| 309.01          | 032         | 083         | 11   |            |               |        | \$375,000 |
| 309.01          | 081         | 083         | 11   |            |               |        | \$65,000  |
|                 |             |             |      |            |               |        |           |
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| TOTAL           |             |             |      |            |               |        | \$440,000 |

# CONTRACT SUMMARY SHEET SUPPLEMENT

| Contract Number |             | FA-         |      |            |               |        |           |
|-----------------|-------------|-------------|------|------------|---------------|--------|-----------|
| Fiscal Year     |             | 2010        |      |            |               |        |           |
| Allotment Code  | Cost Center | Object Code | Fund | Grant Code | Subgrant Code | CFDA # | Amount    |
| 309.01          | 032         | 083         | 11   |            |               |        | \$480,000 |
| 309.01          | 081         | 083         | 11   |            |               |        | \$70,000  |
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|                 |             |             |      |            |               |        |           |
| TOTAL           |             |             |      |            |               |        | \$550,000 |



**CONTRACT**  
**BETWEEN**  
**THE STATE OF TENNESSEE, TREASURY DEPARTMENT**  
**AND**  
**BRYAN, PENDLETON, SWATS & MCALLISTER, LLC**

THIS CONTRACT, by and between the State of Tennessee, Treasury Department, hereinafter referred to as the "State" and Bryan, Pendleton, Swats & McAllister, LLC, hereinafter referred to as the "Contractor", is for the provision of actuarial services to the State, as further defined in the "SCOPE OF SERVICES." The Contractor is a limited liability company having its principal place of business at 5301 Virginia Way, Suite 400 in Brentwood, Tennessee. The Contractor's place of incorporation or organization is in the State of Tennessee.

**WITNESSETH**

WHEREAS, the State administers several programs including, but not limited to, the Tennessee Consolidated Retirement System and the Tennessee Baccalaureate Education System Trust that require the services of an actuary for determining the funding requirements necessary to meet the obligations of the respective programs, and for establishing actuarial and economic assumptions to be used in the actuarial valuation process; and

WHEREAS, the Contractor is an actuary that desires to provide such actuarial services to the State, and the State desires to obtain such services from the Contractor, to meet the requirements of the State in administering the programs.

NOW, THEREFORE, in consideration of the premises and the mutual promises herein contained, the parties have agreed and do hereby enter into this Contract according to the provisions set out herein:

***A. SCOPE OF SERVICES:***

***1. Duties and Extent of Professional Services.*** The Contractor shall perform any and all actuarial services requested by the State with respect to programs over which the

State is responsible for managing. In addition, the Contractor shall be, in general, an advisor to the State in the operation of the programs. Specifically, such services shall include the following:

a. The Contractor shall provide appropriate actuarial assistance to the State in establishing, maintaining and certifying funds sufficient to defray the obligations of the respective programs. At the State's request, the Contractor shall recommend to the State actuarial assumptions and appropriate actuarial tables for use in all calculations in connection with the programs.

b. At such times as the State may request, the Contractor shall make an actuarial investigation into the assumptions and tables used in the operation of the programs. Taking into account the results of such investigation, the State shall adopt for the programs such actuarial assumptions and tables as are deemed necessary.

c. On the basis of such tables and assumptions as the State may adopt, the Contractor shall make a valuation of the assets and liabilities of the programs. The valuation shall be performed at such time/times as the State shall direct.

d. The Contractor shall provide technical advice, either orally or in written form, in connection with miscellaneous problems and questions that may arise from time to time relative to the operation of the programs including, but not limited to, changes in the benefit or funding provisions of the programs, valuation of the programs, inclusion of new valuation groups, changes in the rate of interest, and review of proposed legislation that impact the programs.

e. The Contractor shall be available to meet with appropriate State personnel, committees, boards and commissions at the State's facilities in Nashville to discuss the operation of the programs and miscellaneous questions or problems in relation thereto.

2. **Reliance on Assistant to the Treasurer.** The Contractor may rely upon instructions received from the Assistant to the Treasurer who is over Employee Benefits and Investments, or persons authorized by such assistant to act for the respective programs.

3. **Statutes Incorporated by Reference.** The Contractor shall comply with all state and federal laws pertaining to the respective programs, and all such laws are incorporated herein by reference.

***B. CONTRACT TERM:***

This Contract shall be effective for the period commencing on July 1, 2006 and ending on June 30, 2010. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

***C. PAYMENT TERMS AND CONDITIONS:***

1. **Maximum Liability.** In no event shall the maximum liability of the State under this Contract exceed one million nine hundred thousand dollars (\$1,900,000). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, profit, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

2. **Compensation Firm.** The Service Rates in Section C.3 and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

3. **Payment Methodology.** The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

***a. Calculation of Initial Employer Contribution Rate.*** In consideration of the Contractor calculating the initial employer contribution rate of a political subdivision that passes a resolution for an actuarial study of the costs of participating in the Tennessee Consolidated Retirement System (hereinafter referred to as "Actuarial Study"), the Contractor shall be compensated by the State as follows:

*(1) Fiscal Year 2007.* For each political subdivision that passes a resolution on or after July 1, 2006 but before July 1, 2007 for an Actuarial Study, the Contractor's compensation shall be in the base amount of four hundred six dollars (\$406.00) (hereinafter referred to as "Base Amount"). In addition to the Base Amount, the Contractor shall receive compensation in the amount of four dollars (\$4.00) per employee included on the Actuarial Study up to one hundred (100) employees, and two dollars (\$2.00) per employee included on the Study over one hundred (100) employees. The Base Amount of such Study shall include two (2) prior service options. The amount payable to the Contractor shall be increased by twenty-five percent (25%) for each additional prior service option included in the Study.

*(2) Fiscal Year 2008.* For each political subdivision that passes a resolution on or after July 1, 2007 but before July 1, 2008 for an Actuarial Study, the Contractor's compensation shall be the Base Amount specified in Subparagraph a(1) above, but adjusted by the percentage increase, if any, in the average Consumer Price Index (All Urban Consumers [CPI-U]: U.S. city average, not seasonally adjusted, index base period: 1982-84=100) as published by the United States Department of Labor, Bureau of Labor Statistics between that figure for December 2005 and December 2006, up to a

maximum of three percent (3%). In addition to the Base Amount, the Contractor shall receive compensation in the amount of four dollars (\$4.00) per employee included on the Actuarial Study up to one hundred (100) employees, and two dollars (\$2.00) per employee included on the Study over one hundred (100) employees. The Base Amount of such Study shall include two (2) prior service options. The amount payable to the Contractor shall be increased by twenty-five percent (25%) for each additional prior service option included in the Study.

(3) *Fiscal Year 2009.* For each political subdivision that passes a resolution on or after July 1, 2008 but before July 1, 2009 for an Actuarial Study, the Contractor's compensation shall be the Base Amount specified in Subparagraph a(2) above, but adjusted by the percentage increase, if any, in the average Consumer Price Index (All Urban Consumers [CPI-U]: U.S. city average, not seasonally adjusted, index base period: 1982-84=100) as published by the United States Department of Labor, Bureau of Labor Statistics between that figure for December 2006 and December 2007, up to a maximum of three percent (3%). In addition to the Base Amount, the Contractor shall receive compensation in the amount of four dollars (\$4.00) per employee included on the Actuarial Study up to one hundred (100) employees, and two dollars (\$2.00) per employee included on the Study over one hundred (100) employees. The Base Amount of such Study shall include two (2) prior service options. The amount payable to the Contractor shall be increased by twenty-five percent (25%) for each additional prior service option included in the Study.

(4) *Fiscal Year 2010.* For each political subdivision that passes a resolution on or after July 1, 2009 but before July 1, 2010 for an Actuarial Study, the Contractor's compensation shall be the Base Amount specified in Subparagraph a(3) above, but adjusted by the percentage increase, if any, in the average Consumer Price Index (All Urban Consumers [CPI-U]: U.S. city average, not seasonally adjusted, index base period: 1982-84=100) as published by the United States Department of Labor, Bureau of Labor Statistics between that figure for December 2007 and December 2008, up to a

maximum of three percent (3%). In addition to the Base Amount, the Contractor shall receive compensation in the amount of four dollars (\$4.00) per employee included on the Actuarial Study up to one hundred (100) employees, and two dollars (\$2.00) per employee included on the Study over one hundred (100) employees. The Base Amount of such Study shall include two (2) prior service options. The amount payable to the Contractor shall be increased by twenty-five percent (25%) for each additional prior service option included in the Study.

***b. Calculation of Subsequent Prior Service Options.*** In consideration of the Contractor calculating the cost of any subsequent prior service option desired by a political subdivision participating in the Tennessee Consolidated Retirement System (hereinafter referred to as "Prior Service Study"), the Contractor shall be compensated by the State as follows:

*(1) Fiscal Year 2007.* For each political subdivision that passes a resolution on or after July 1, 2006 but before July 1, 2007 for a Prior Service Study, the Contractor's compensation shall be three hundred ten dollars (\$310.00) if ten (10) employees or less are included on the Prior Service Study, or six hundred twenty dollars (\$620.00) if the Prior Service Study includes over ten (10) employees.

*(2) Fiscal Year 2008.* For each political subdivision that passes a resolution on or after July 1, 2007 but before July 1, 2008 for a Prior Service Study, the Contractor's compensation shall be the amount specified in Subparagraph b(1) above, but adjusted by the percentage increase, if any, in the average Consumer Price Index (All Urban Consumers [CPI-U]: U.S. city average, not seasonally adjusted, index base period: 1982-84=100) as published by the United States Department of Labor, Bureau of Labor Statistics between that figure for December 2005 and December 2006, up to a maximum of three percent (3%).

*(3) Fiscal Year 2009.* For each political subdivision that passes a resolution on or after July 1, 2008 but before July 1, 2009 for a Prior Service Study, the Contractor's compensation shall be the amount specified in Subparagraph b(2) above, but adjusted by

the percentage increase, if any, in the average Consumer Price Index (All Urban Consumers [CPI-U]: U.S. city average, not seasonally adjusted, index base period: 1982-84=100) as published by the United States Department of Labor, Bureau of Labor Statistics between that figure for December 2006 and December 2007, up to a maximum of three percent (3%).

(4) *Fiscal Year 2010.* For each political subdivision that passes a resolution on or after July 1, 2009 but before July 1, 2010 for a Prior Service Study, the Contractor's compensation shall be the amount specified in Subparagraph b(3) above, but adjusted by the percentage increase, if any, in the average Consumer Price Index (All Urban Consumers [CPI-U]: U.S. city average, not seasonally adjusted, index base period: 1982-84=100) as published by the United States Department of Labor, Bureau of Labor Statistics between that figure for December 2007 and December 2008, up to a maximum of three percent (3%).

**c. Computer Costs.** The Contractor's compensation for computer utilization during any given month shall be in the flat amount of sixteen percent (16%) of the amount payable to the Contractor pursuant to Paragraphs C.3.d – C.3.g below.

**d. Other Services.** Except for the services described in Paragraphs C.3.e – C.3.g below, the Contractor's compensation for all other services requested by the State shall be as follows:

(1) *Fiscal Year 2007.* For services rendered during the period from July 1, 2006 through July 1, 2007:

| Project   | Hourly Rate | Maximum Fee Amount |
|---|-------------|--------------------|
| Actuarial Valuation of the Tennessee Baccalaureate Education System Trust | \$207       | \$32,500           |
| Other Services  | \$207       | N/A                |

(2) *Fiscal Year 2008.* For services rendered during the period from July 1, 2007 through July 1, 2008, the Contractor's compensation shall be the amount specified in Subparagraph d(1) above, but adjusted by the percentage increase, if any, in the average

Consumer Price Index (All Urban Consumers [CPI-U]: U.S. city average, not seasonally adjusted, index base period: 1982-84=100) as published by the United States Department of Labor, Bureau of Labor Statistics between that figure for December 2005 and December 2006, up to a maximum of three percent (3%).

(3) *Fiscal Year 2009.* For services rendered during the period from July 1, 2008 through June 30, 2009, the amount specified in Subparagraph d(2) above, but adjusted by the percentage increase, if any, in the average Consumer Price Index (All Urban Consumers [CPI-U]: U.S. city average, not seasonally adjusted, index base period: 1982-84=100) as published by the United States Department of Labor, Bureau of Labor Statistics between that figure for December 2006 and December 2007, up to a maximum of three percent (3%).

(4) *Fiscal Year 2010.* For services rendered during the period from July 1, 2009 through June 30, 2010, the amount specified in Subparagraph d(3) above, but adjusted by the percentage increase, if any, in the average Consumer Price Index (All Urban Consumers [CPI-U]: U.S. city average, not seasonally adjusted, index base period: 1982-84=100) as published by the United States Department of Labor, Bureau of Labor Statistics between that figure for December 2007 and December 2008, up to a maximum of three percent (3%).

***e. 2007 Actuarial Valuation of the Tennessee Consolidated Retirement System.***

The Contractor's compensation for performing the 2007 actuarial valuation of the Tennessee Consolidated Retirement System shall be the lesser of: (i) the hourly rate specified in Paragraph C.3.d(2) above, or (2) \$260,000 irrespective of the number of hours actually required to perform the valuation.

***f. 2008 Experience Study of the Tennessee Consolidated Retirement System.*** The Contractor's compensation for performing the 2008 experience study of the Tennessee Consolidated Retirement System shall be the lesser of: (i) the hourly rate specified in Paragraph C.3.d(3) above, or (2) \$160,000 irrespective of the number of hours actually required to perform the valuation.



***g. 2009 Actuarial Valuation of the Tennessee Consolidated Retirement System.***

The Contractor's compensation for performing the 2009 actuarial valuation of the Tennessee Consolidated Retirement System shall be the lesser of: (i) the hourly rate specified in Paragraph C.3.d(4) above, or (2) \$280,000 irrespective of the number of hours actually required to perform the valuation.

***4. Invoice Submittal.*** The Contractor shall submit invoices for completed work, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Invoices for the services described in Paragraphs C.3.d – C.3.g shall, at a minimum, include the name of each individual, the individual's job title, the number of hours worked during the project, the applicable hourly rate, and the total amount requested by the Contractor for the project, not to exceed any applicable maximum fee amount. The Contractor shall not be compensated for travel time to the primary location of service provision.

***5. Travel Compensation.*** The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

***6. Payment of Invoice.*** The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

***7. Invoice Reductions.*** The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.

***8. Deductions.*** The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.

9. **Automatic Deposits.** The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

***D. STANDARD TERMS AND CONDITIONS:***

1. **Required Approvals.** The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

2. **Modification and Amendment.** This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.

3. **Termination for Convenience.** The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least thirty (30) calendar days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

4. **Termination for Cause.** If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services.

Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.

5. **Subcontracting.** The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

6. **Conflicts of Interest.** The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

7. **Nondiscrimination.** The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

8. **Records.** The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the

Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

**9. Monitoring.** The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

**10. Progress Reports.** The Contractor shall submit brief, periodic, progress reports to the State as requested.

**11. Strict Performance.** Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

**12. Independent Contractor.** The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

**13. State Liability.** The State shall have no liability except as specifically provided in this Contract.

14. **Force Majeure.** The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.

15. **State and Federal Compliance.** The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.

16. **Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.

17. **Completeness.** This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

18. **Severability.** If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

19. **Headings.** Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

***E. SPECIAL TERMS AND CONDITIONS:***

1. **Conflicting Terms and Conditions.** Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.

2. **Communications and Contacts.** All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below *or* to such other party, facsimile number, or address as may be hereafter specified by written notice.

*The State:*

State of Tennessee, Treasury Department  
ATTN: Assistant Treasurer  
11<sup>th</sup> Floor, Andrew Jackson State Office Building  
500 Deaderick Street  
Nashville, Tennessee 37243  
Telephone Number: (615) 253-1167  
Facsimile Number: (615) 253-4966

*The Contractor:*

Bryan, Pendleton, Swats & McAllister, LLC  
5301 Virginia Way, Suite 400  
Brentwood, Tennessee 37027  
Telephone Number: (615) 665-5303  
Facsimile Number: (615) 665-1650

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

3. **Subject to Funds Availability.** The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all

work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

4. **State Ownership of Work Products.** The State shall have all ownership right, title, and interest, including ownership of copyright, in all work products created, designed, developed, derived, documented, installed, or delivered to the State under this Contract. The State shall have royalty-free and unlimited rights to use, disclose, reproduce, or publish, for any purpose whatsoever, all said work products. The Contractor shall furnish such information and data upon request of the State, in accordance with the Contract and applicable State law.

5. **Prohibited Advertising.** The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.

6. **Date/Time Hold Harmless.** As required by Tennessee Code Annotated, Section 12-4-118, the Contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.

7. **Hold Harmless.** The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service

is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106.

IN WITNESS THEREOF, the parties have by their duly authorized representatives set their signatures.

BRYAN, PENDLETON, SWATS AND MCALLISTER, LLC

By: \_\_\_\_\_  
(Signature)

Date: \_\_\_\_\_

\_\_\_\_\_  
(Typed or Printed Name and Title)

DEPARTMENT OF TREASURY  
STATE OF TENNESSEE

By: \_\_\_\_\_  
Dale Sims, Treasurer

Date: \_\_\_\_\_

APPROVED:  
STATE OF TENNESSEE  
DEPARTMENT OF FINANCE AND ADMINISTRATION

By: \_\_\_\_\_  
M. D. Goetz, Jr., Commissioner

Date: \_\_\_\_\_



APPROVED:  
STATE OF TENNESSEE  
COMPTROLLER OF THE TREASURY

By: \_\_\_\_\_  
John G. Morgan, Comptroller

Date: \_\_\_\_\_